

Federal Communications Commission

DA 96-1424

SEP 3 11 30 AM '96

DISP Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 95-106
Table of Allotments,) RM-8655
FM Broadcast Stations.) RM-8698
(Hayden and Meeker, Colorado)¹)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 23, 1996

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Released: August 30, 1996

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making (Notice)*, 10 FCC Rcd 7637 (1995), issued in response to a petition filed on behalf of Thomas Broadcasting ("petitioner") proposing the allotment of Channel 251A to Hayden, Colorado (pop. 1,444)² as that community's second local FM service. Petitioner filed supporting comments in response to the *Notice*. 1530, LLC ("1530") filed comments and a counterproposal.³ to which the petitioner responded.

2. In response to the *Notice*, 1530 requested the allotment of Channel 251C to Meeker, Colorado (pop. 2,098), as that community's first local aural transmission service. The distance between Hayden and Meeker, Colorado, is 75.4 kilometers (47 miles), whereas a minimum distance of 226 kilometers (140 miles) is required in this instance. Therefore, the proposals are mutually exclusive.

3. In support of its proposal, 1530 asserts that the allotment of Channel 251C to Meeker would provide a first FM service to approximately 415 people, a second FM service to approximately 2,590 people, as well as a first local transmission service to Meeker, thus fulfilling allotment priorities (1)-(3). Moreover, 1530 reports that according to its consulting engineer, Channel 251C at Meeker would provide 60 dBu service to 44,875 people overall in a combined area of 26,330 square kilometers. Conversely, 1530 adds that the use of Channel 251A at Hayden would provide reception service to 12,540 people only in an area of 2,430 square kilometers. Additionally, 1530 remarks that as Hayden currently has local transmission

¹The community of Meeker has been added to the caption.

²Population figures reported herein were taken from the 1990 U.S. Census.

³Public Notice of the counterproposal was given September 26, 1995 (Report No. 2100).

service^{4,5} the use of Channel 251A at Hayden would advance lower allotment priority (4) "other public interest matters."⁶ 1530 also provided extensive demographic comparisons concerning Meeker and Hayden in an effort to demonstrate that its proposal to allot Channel 251C to Meeker is superior to adding Channel 251A at Hayden.

4. In responsive comments, petitioner concedes that the requested allotment of Channel 251C to Meeker is indeed preferable to its proposal since, according to 1530, it would eliminate both white and gray areas, while providing service to a larger population. As a result of its concession, petitioner suggests consideration of Channel 297A in lieu of Channel 251A at Hayden, and reiterates a commitment to apply for whichever Class A channel the Commission may allot at Hayden in response to its request.

5. Based upon the above information, we believe the public interest would benefit from the interests expressed in providing local transmission service at both Hayden and Meeker, Colorado. Therefore, we will allot Channel 297A to Hayden and Channel 251C to Meeker, Colorado, as requested.⁷ Channel 297A can be allotted to Hayden without the imposition of a site restriction, utilizing coordinates 40-29-42 North Latitude and 107-15-30 West Longitude. Channel 251C can be allotted to Meeker consistent with the minimum distance separation requirements contained in Section 73.207(b)(1) of the Commission's Rules, utilizing city reference coordinates 40-02-24 North Latitude and 107-55-00 West Longitude.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 15, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

⁴Stations KIDN(FM), Channel 240C3, and KIDN(AM) are licensed at Hayden.

⁵1530 advises that Hayden also receives reception service from a Class C FM station located in nearby Craig, Colorado. However, the Commission has traditionally held that such reception service is not an adequate substitute for local service. See *Clinton, Louisiana*, 45 R.R. 2d 1587 (1979), and *Westover and Grafton, West Virginia*, 46 FR 10737 (1981).

⁶See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), 51 RR 2d 807 (1982).

⁷Although it was determined that Channel 238C is also available to Meeker, it requires a site restriction 13.6 kilometers (8.4 miles) southwest of the community to comply with the minimum distance separation requirements contained in Section 73.207(b) of the Commission's Rules. While that would not have hindered our efforts to resolve the instant conflict, it is the Commission's policy to impose the least restrictive theoretical site on a new proposed allotment. See *Vacaville, California*, 4 FCC Rcd 8315 (1989), *recon. denied*, 6 FCC Rcd 143 (1991). In this instance, the petitioner has conceded that the requested allotment of Channel 251C to Meeker, which we have determined does not require a site restriction, constitutes a higher allotment priority than the requested allotment of Channel 251A to Hayden. Therefore, and based upon the petitioner's willingness to apply for Channel 297A in lieu of Channel 251A at Hayden, no additional consideration of Channel 238C at Meeker is warranted, and it will be removed as an "add" proposal from the Commission's data base.

<u>City</u>	<u>Channel No.</u>
Hayden, Colorado	240C3,297A
Meeker, Colorado	251C

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. The window period for filing applications for Channel 297A at Hayden, Colorado, and for Channel 251C at Meeker, Colorado, will open on October 15, 1996, and close on November 15, 1996.

9. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 297A at Hayden, Colorado, and for Channel 251C at Meeker, Colorado, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau